IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 947 of 2003 (M/B)

Manjeet Johar S/o Late S.S. Johar,
R/o 104/38, Dehradun Road,
Risikesh, District Dehradu. …… Petitioner

Versus

1. Haridwar Development Authority,
   through its Secretary.
2. Secretary, Urban Development.
3. Anil Kukreti S/o Sureshanand Kukreti,
   R/o 101, Dehradun Road,
   Rishikesh.
4. Sri Pramod Kumar S/o Phool Chandra,
   R/o Ghat Road, Rishikesh.
5. Sri Anoop Kumar S/o Phool Chandra,
   R/o Ghat Road, Rishikesh. …… Respondents

Mr. S.N. Babulkar, Senior Counsel with Mr. Yogesh Pacholia, Advocate for the petitioner.
Mr. S. Dhulia, Senior Counsel with Mr. Vipul Sharma, Advocate for respondent No.1.
Mr. Subhash Upadhyaya, Standing Counsel for respondent No. 2.
None for respondents Nos. 3 to 5.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant. J.

RAJEEV GUPTA, C.J. (Oral)

Mr. S.N. Babulkar, Senior Counsel with Mr. Yogesh Pacholia, Advocate for the petitioner.

Mr. S. Dhulia, Senior Counsel with Mr. Vipul Sharma, Advocate for respondent No. 1.

Mr. Subhash Upadhyaya, Standing Cousnel for respondent No.2.

None for respondents Nos. 3 to 5.

They are heard.

2. Petitioner Manjeet Johar has filed this writ petition for the following reliefs:

> "i) Issue a writ, rule, order or direction in the nature of certiorari calling for the records and quashing the impugned notice dated 1.9.2003 (annexure no. 4)

and order dated 27.9.2003 (annexure no. 6) passed by respondent 1.

ii) Issue a writ, rule, order or direction in the nature of Mandamus commanding and directing the respondents not to charge compound fee without making proper apportionment of liability and without verifying as to what portion of the construction is in actual possession and ownership of the petitioner.

iii) Issue any writ, rule, order or direction, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv) To award the cost to the petitioner.

3. In the writ petition, the following interim order was passed:

"Heard Sri S.N. Babulkar, learned counsel for the petitioner, Sri Sudhansu Dhulia, learned counsel for Haridwar Development Authority and learned Chief Standing Counsel for respondent No. 2.

Admit.

Issue notices to the private respondents returnable at an early date.

The court fee raised in the petition against the compounding charges sought to be recovered by Haridwar Development Authority. According the learned counsel for the petitioner the compounding charges have not been properly done, it is excessive in nature. He submitted that he is ready to deposit 50% of the amount by Friday.

In case, by Friday i.e. 17.10.2003, the petitioner deposits Rs. 6,00,000/- with the Haridwar Development Authority, further recovery from the petitioner shall remain stayed, till the next date of listing.

In the meantime, the parties shall exchange their affidavits. List on 03.11.2003."

4. The petitioner's grievance is that the composition fee of Rs.11,84,509/- for regularization of the unauthorized construction of the shops undertaken by the petitioner is excessive and is also bad on account of non-consideration of the direction of the Secretary, Urban Development on the petitioner's application (Annexure 4), to apportion the composition fee between the petitioner and respondents Nos. 3 to 5.

5. Mr. Sudhanshu Dhulia, the learned Senior Counsel for respondent No. 1 invited our attention to petitioner's application (Annexure CA6), whereby the petitioner offered to pay composition

fee, if the construction undertaken by the petitioner was found to be beyond the sanctioned plan.

6. Admittedly, first respondent Haridwar Development Authority was competent to impose composition fee for regularization of the unauthorized construction. It is also not in dispute that after receiving the notice from the Development Authority, petitioner himself submitted an application (Annexure CA6) offering to pay composition fee for the unauthorized construction. The learned counsel for the petitioner could not demonstrate as to how the composition fee of Rs.11,84,509/- is excessive. We, therefore, do not find any illegality in the imposition of a sum of Rs. 11,84,509/- as composition fee.

7. So far as the petitioner's other submission in regard to the apportionment of the composition fee between the petitioner and respondents Nos. 3 to 5 is concerned, we are of the opinion that the matter requires reconsideration by first respondent Haridwar Development Authority in view of the direction of the Secretary, Urban Development on the petitioner's application (Annexure 4).

8. We, therefore, direct that on the petitioner's depositing balance amount of Rs. 5,84,509/- with first respondent Haridwar Development Authority within a period of three months from today, first respondent Haridwar Development Authority shall re-examine as to whether the petitioner is liable to pay the entire amount of Rs. 11,84,509/- of composition fee or the same is required to be apportioned between the petitioner and respondents Nos. 3 to 5. The above exercise be completed within a period of two months from the date of the deposit of the balance amount of Rs. 5,84,509/- by the petitioner.

9. If the petitioner is found liable to pay only a part of the composition fee of Rs. 11,84,509/-, the balance amount shall be refunded to the petitioner within a period of one week from the said decision and the authorities shall be free to recover the said amount from those persons who may be found liable in the inquiry.

10. On the petitioner's failure to deposit the balance amount of Rs. 5,84,509/-, first respondent Haridwar Development Authority shall be free to recover the same from the petitioner in accordance with law.

11. With the above directions, the writ petition stands disposed of.

12. The interim order shall stand vacated.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
27.04.2006 **27.04.2006**

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